

1 ROBERT W. FERGUSON  
2 *Attorney General*

3 JEFFREY T. SPRUNG, WSBA #23607  
4 R. JULY SIMPSON, WSBA #45869  
5 PAUL M. CRISALLI, WSBA #40681  
6 SPENCER W. COATES, WSBA #49683  
7 *Assistant Attorneys General*  
8 800 Fifth Avenue, Suite 2000  
9 Seattle, WA 98104-3188  
10 (206) 464-7744

7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF WASHINGTON**  
9 **AT SPOKANE**

10 STATE OF WASHINGTON,

11 v.  
12 Plaintiff,

13 BETSY DeVOS, in her official  
14 capacity as Secretary of the United  
15 States Department of Education, and  
16 the UNITED STATES  
17 DEPARTMENT OF EDUCATION, a  
18 federal agency,  
19 Defendants.

NO. 2:20-cv-00182-TOR

PLAINTIFF STATE OF  
WASHINGTON'S REPLY IN  
SUPPORT OF ITS MOTION TO  
EXPEDITE AND SET  
BRIEFING SCHEDULE FOR  
PARTIAL SUMMARY  
JUDGMENT

NOTED FOR: July 1, 2020  
Without Oral Argument

17 Washington files this reply in support of its motion for expedited  
18 consideration of its Motion for Partial Summary Judgment, which it plans to file  
19 today. Washington did not represent that it planned to seek partial final judgment  
20 under Fed. R. Civ. P. 54(b), as implied by the Department (ECF No. 35 at 2-3).  
21 Instead, it will seek partial summary judgment. *See* Fed. R. Civ. P. 56(a)  
22 ("MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT")

PLAINTIFF'S REPLY RE: MOTION  
TO EXPEDITE AND SET BRIEFING  
SCHEDULE FOR PARTIAL  
SUMMARY JUDGMENT  
NO. 2:20-cv-00182-TOR

1 (emphasis added). “[A] partial summary judgment is merely a pretrial  
 2 adjudication that certain issues shall be deemed established for the trial of the  
 3 case. This adjudication . . . serves the purpose of speeding up litigation by  
 4 eliminating before trial matters wherein there is no genuine issue of fact.”  
 5 Fed. R. Civ. P. 56 (Notes of Advisory Committee on Rules—1946 Amend.).  
 6 Thus, Washington’s motion does implicate Rule 54(b) and the policy against  
 7 piecemeal appeals serving as the basis for the Department’s opposition. *See, e.g.*,  
 8 *Reiter v. Cooper*, 507 U.S. 258, 265 (1993); *Wood v. GCC Bend, LLC*, 422 F.3d  
 9 873, 878 (9th Cir. 2005); *Cont'l Airlines, Inc. v. Goodyear Tire & Rubber Co.*,  
 10 819 F.2d 1519, 1525 (9th Cir. 1987).

11 Washington objects to the summary judgment schedule proposed in the  
 12 Department’s opposition. The schedule gives Washington only eight days to  
 13 review the administrative record, resolve or litigate any issues with the  
 14 completeness of the record, and prepare a motion for summary judgment on all  
 15 issues in the case, including whether the record supports the agency’s decision.  
 16 This is completely unrealistic.

17 Finally, the Department includes in its opposition brief a request to stay its  
 18 obligation to answer the complaint. This request was not raised with Washington  
 19 previously. Washington believes it is premature for the Court to address this  
 20 request, before the parties have had a chance to meet and confer.  
 21 *See* LCivR 7(b)(2).

1 Washington respectfully requests that the Court order the expedited partial  
2 summary judgment schedule outlined in its motion.

3 RESPECTFULLY SUBMITTED this 29th day of June 2020.

4 ROBERT W. FERGUSON  
5 Attorney General of Washington

6 */s/ Jeffrey T. Sprung*  
7 JEFFREY T. SPRUNG, WSBA #23607  
8 R. JULY SIMPSON, WSBA #45869  
9 PAUL M. CRISALLI, WSBA #40681  
10 SPENCER W. COATES, WSBA #49683  
11 Assistant Attorneys General  
12 800 Fifth Avenue, Suite 2000  
13 Seattle, WA 98104-3188  
14 (206) 464-7744  
15 jeff.sprung@atg.wa.gov  
16 july.simpson@atg.wa.gov  
17 paul.crisalli@atg.wa.gov  
18 spencer.coates@atg.wa.gov  
19 *Attorneys for Plaintiff State of Washington*

1                   **DECLARATION OF SERVICE**

2                   I hereby declare that on this day I caused the foregoing document to be  
3                   electronically filed with the Clerk of the Court using the Court's CM/ECF System  
4                   which will serve a copy of this document upon all counsel of record.

5                   DATED this 29th day of June 2020, at Seattle, Washington.

6  
7                   */s/ Jeffrey T. Sprung*  
8                   JEFFREY T. SPRUNG, WSBA #23607  
9                   Assistant Attorney General  
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